

J.R., Appellant

**U.S. POSTAL SERVICE, POST OFFICE,
Melville, NY, Employer**

Appearances:

Jeffrey P. Zeelander, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

Before:

JURISDICTION

On May 21, 2018 appellant, through counsel, filed a timely appeal from a March 27, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the March 27, 2018 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 15, 2017, finding that he no longer had residuals or disability causally related to his accepted January 17, 2013 left knee injury; and (2) whether appellant has met his burden of proof to establish continuing employment-related residuals or disability on or after February 15, 2017.

FACTUAL HISTORY

On January 22, 2013 appellant, then a 43-year-old tractor-trailer driver, filed a traumatic injury claim (Form CA-1), alleging that he sustained a left knee injury on January 17, 2013 as a result of unloading a truck while in the performance of duty. He stopped work on January 18, 2013.

By decision dated February 13, 2013, OWCP accepted the claim for a left knee sprain, and authorized left knee surgery. The record reveals that appellant underwent knee surgery on September 25, 2015.

On October 2, 2015 appellant filed a notice of recurrence (Form CA-2a), claiming disability commencing September 25, 2015. By decision dated November 4, 2015 OWCP accepted the recurrence claim, finding that appellant was totally disabled from work due to the surgery. Appellant returned to work in a full-time, limited-duty capacity on January 6, 2016.

On November 29, 2016 OWCP referred appellant to Dr. Edward Mills, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of his accepted employment-related conditions. In his December 13, 2016 report, Dr. Mills reviewed a statement of accepted facts (SOAF), history of the injury, and the medical evidence of record. He conducted a physical examination and measured appellant's range of motion (ROM) with a handheld inclinometer. Dr. Mills found that appellant had no objective or clinical findings on examination to indicate that the accepted conditions were still active and causing objective symptoms. He opined that there was no current disability from work due to the accepted condition or its residuals from the employment injury. Dr. Mills concluded that appellant's accepted condition had resolved and did not require additional medical care. He advised that appellant had reached maximum medical improvement (MMI) and was able to perform his regular work duties as of December 13, 2016.

On January 6, 2017 OWCP provided a proposed notice of its intent to terminate her wage-loss compensation and medical benefits, finding that there were no remaining residuals or disability causally related to the accepted January 17, 2013 employment injury. It afforded appellant 30 days to submit evidence or argument if she disagreed with the proposed termination.

By decision dated February 15, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the evidence was represented by Dr. Mills' opinion.

Appellant subsequently requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the February 15, 2017 termination decision.

A telephonic hearing was held before an OWCP hearing representative on August 14, 2017. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Following the hearing, appellant submitted an August 10, 2017 report from Dr. Scott Silverberg, a Board-certified orthopedic surgeon, who opined that appellant continued to experience pain and weakness in the left leg and required a cane to walk. Dr. Silverberg diagnosed residual quadriceps atrophy with residual chondromalacia patella and advised that appellant was capable of limited-duty work. He opined that appellant had a permanent partial disability with regard to his left knee.

In an August 17, 2017 report, Dr. Silverberg indicated that he had treated appellant in 2013. At that time he indicated that appellant was originally injured on the job on January 17, 2013 when he was unloading mail from a truck when he twisted his left knee and felt a popping sensation in the left knee. Dr. Silverberg explained that he had initially diagnosed chondromalacia patella of the lateral facet of the patella after conducting an examination and reviewing a magnetic resonance imaging (MRI) arthrogram. He provided current medical diagnoses which included chondromalacia patella residual, crepitus underneath the patella, and lumbar radiculopathy impacting on the knee. Dr. Silverberg explained that the primary symptom caused by plica syndrome was pain and there may be a snapping sensation along the inside of the knee as the knee was bent due to the rubbing of the thickened plica over the round edge of the thighbone where it entered the joint. He disagreed with Dr. Mills' second opinion noting that, while Dr. Mills opined that the accepted condition of left knee sprain had resolved, he failed to establish specifically that the chondromalacia patella and medial plica syndrome had resolved. Dr. Silverberg further contended that appellant was not capable of performing full, unrestricted duty including heavy lifting and full standing as well as moving heavy equipment. He concluded that appellant was still suffering residuals from his employment injury on January 17, 2013.

By decision dated October 11, 2017, OWCP's hearing representative affirmed the February 15, 2017 termination decision, finding that Dr. Mills' December 16, 2016 opinion represented the weight of the medical evidence and appellant's accepted left knee sprain condition had resolved. He further found, however, that Dr. Silverberg indicated that appellant's chondromalacia patella was causally related to the accepted trauma, but that Dr. Mills was only queried with regard to whether the accepted employment-related left knee sprain had resolved and remanded the case to OWCP to ascertain if the diagnosed chondromalacia patella and plica syndrome conditions were causally related to the accepted employment injury and whether these conditions had resolved.

On October 26, 2017 OWCP requested clarification from Dr. Mills regarding whether the acceptance of the claim should be expanded to include additional conditions.

On November 16, 2017 OWCP referred appellant to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of his accepted employment-related conditions.

OWCP subsequently received a November 16, 2017 report from Dr. Silverberg, who diagnosed left knee post-traumatic chondromalacia patella with quad atrophy and numbness left leg and advised that appellant was restricted to limited-duty work as he used a cane.

Dr. Sultan, in a November 30, 2017 report, reviewed the SOAF, history of the injury, and the medical evidence of record. He conducted a physical examination and found that appellant claimed residual pain involving his left knee and used a cane for support when ambulating. Inspection of the left knee revealed over the anterior region well-healed arthroscopic puncture wound tears. Stress testing of the left knee revealed intact collateral and cruciate ligaments. Dr. Sultan detected no abnormal crepitus with ROM testing and appellant's patella femoral compression test was negative. There were no complaints on palpation over the medial or lateral joint line. ROM testing of the left knee was obtained with goniometric measurement: left knee extension was complete at 0 degrees and flexion was at 140 degrees. A comparative examination of the right knee revealed full extension at 0 degrees and flexion at 145 degrees. There were no complaints on palpation over the medial or lateral joint line. Dr. Sultan found that appellant's left knee revealed mild swelling with low grade left knee motion restriction with flexion and opined that these clinical findings represented low grade disabling residuals of the accepted condition. He concluded that appellant's accepted conditions were still "partially active" and causing objective examination symptoms. Dr. Sultan reported that there were no subjective complaints that did not correspond with objective findings. He advised that appellant's "inability to perform full[-]duty regular job activities can be expected to last indefinitely."

On February 2, 2018 OWCP received an addendum report from Dr. Mills, providing clarification regarding his December 13, 2016 second opinion report. In his February 2, 2018 addendum report, Dr. Mills opined that the accepted diagnoses should be expanded to include chondromalacia of the patella and medial plica syndrome as causally related to the January 17, 2013 employment injury because the injury aggravated these underlying preexisting conditions. Dr. Mills further opined that these additional diagnoses were no longer active or causing objective symptoms and advised that appellant was able to perform full-time, regular-duty work.

By decision dated February 2, 2018, OWCP expanded acceptance of appellant's claim to include chondromalacia patella and plica syndrome of the left knee.

On March 1, 2018 counsel requested reconsideration and appellant submitted a September 7, 2017 report from Dr. Silverberg who reiterated his medical diagnoses and opinions.

By decision dated March 27, 2018, OWCP denied modification of its prior decision, finding that Dr. Mills' reports continued to represent the weight of the medical evidence and established that appellant's accepted conditions had ceased without residuals effective February 15, 2017.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized

⁴ See *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ See *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

medical opinion evidence based on a proper factual and medical background.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 15, 2017, finding that he no longer had residuals or disability causally related to the accepted January 17, 2013 employment injury.

OWCP accepted appellant's claim for left knee sprain and authorized left knee surgery, which was performed on September 25, 2015. It subsequently terminated his wage-loss compensation benefits effective February 15, 2017 based on a December 13, 2016 report from Dr. Mills.

In his December 13, 2016 report, Dr. Mills found that appellant had no objective findings on examination and no objective clinical findings to indicate that the accepted conditions were still active and causing objective symptoms. He opined that there was no current disability from work due to the accepted condition or its residuals from the employment injury. Dr. Mills advised that appellant had reached MMI and was able to perform his regular work duties as of December 13, 2016.

The Board finds that Dr. Mills' report represents the weight of the medical evidence at the time OWCP terminated benefits and that OWCP properly relied on his report in terminating appellant's wage-loss compensation. The Board finds that he had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Mills is a specialist in the appropriate field. His opinion is based on proper factual and medical history and his report contained a detailed summary of this history. Dr. Mills addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's work-related condition.⁹ At the time benefits were terminated, he found no basis on which to attribute any residuals or continued disability to appellant's accepted condition. Dr. Mills' opinion as set forth in his December 13, 2016 report is found to be probative evidence and reliable. The Board thus finds that Dr. Mills' opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions.

Accordingly, the Board finds that Dr. Mills' opinion constitutes the weight of the medical evidence and establishes that OWCP has met its burden of proof to terminate appellant's wage-

⁶ See *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ See *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ See *James F. Weikel*, 54 ECAB 660 (2003).

⁹ See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

loss compensation and medical benefits, effective February 15, 2017, as he no longer had residuals or disability causally related to his accepted January 17, 2013 left knee injury.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates compensation benefits, the burden shifts to appellant to establish that he or she has continuing disability causally related to the accepted employment injury.¹⁰ To establish causal relationship between the disability claimed and the employment injury, appellant must submit rationalized medical evidence or opinion based on a complete medical and factual background supporting causal relationship.¹¹ Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹²

ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision.

In the case of *William A. Couch*,¹³ the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received prior to issuances of its final decision. In this case, in a decision dated March 27, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 15, 2017, finding that Dr. Mills' reports continued to represent the weight of the medical evidence and appellant's accepted conditions had ceased without residuals.

However, in a decision dated October 11, 2017, an OWCP hearing representative found that Dr. Mills was only queried with regard to whether the accepted employment-related left knee sprain had resolved and remanded the case to OWCP to ascertain if the diagnosed chondromalacia patella and plica syndrome conditions were causally related to the accepted employment injury and whether these conditions had resolved. OWCP subsequently referred appellant to Dr. Sultan for a second opinion evaluation to determine the nature and extent of his accepted employment-related conditions. In his November 30, 2017 report, Dr. Sultan indicated that he had reviewed the medical evidence of record and completed a physical examination of appellant. He noted that the clinical and physical findings represented low grade disabling residuals of the accepted condition and concluded that appellant's accepted conditions were still "partially active" and causing objective examination symptoms. Dr. Sultan further opined that appellant's inability to perform full-duty regular job activities could be expected to last indefinitely.¹⁴

¹⁰ See *D.M.*, Docket No. 17-1052 (issued January 24, 2019); *J.R.*, Docket No. 17-1352 (issued August 13, 2018).

¹¹ See *D.M.*, *id.*; *A.C.*, Docket No. 16-1670 (issued April 6, 2018); *R.D.*, Docket No. 16-0892 (issued December 20, 2016).

¹² *D.A.*, Docket No. 18-1726 (issued April 2, 2019); *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ 41 ECAB 548 (1990).

¹⁴ Dr. Silverberg prepared medical reports received after the termination decision. In light of the Board's disposition on this issue they need not be addressed in this decision.

The Board finds that OWCP, in its March 27, 2018 decision, did not consider the November 30, 2017 second opinion report from Dr. Sultan. For this reason, the case will be remanded to OWCP for consideration of all the evidence submitted at the time of the March 27, 2018 decision. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision regarding whether appellant had continued residuals or disability on or after February 15, 2017 causally related to his accepted January 17, 2013 employment injury.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 15, 2017, finding that he no longer had residuals or disability causally related to his accepted January 17, 2013 left knee injury. The Board further finds that the case is not in posture for decision regarding whether appellant has met his burden of proof to establish continuing employment-related residuals or disability on or after February 15, 2017.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: July 25, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board